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*Attorneys for Defendants InComm Financial Services, Inc. and Pathward, N.A.*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

KEVIN SMITH

Plaintiff,

vs.

INCOMM FINANCIAL SERVICES, INC. AND  
PATHWARD, N.A.

Defendants.

Case No. 5:23-CV-4687-EKL

**STIPULATED REQUEST FOR  
SCHEDULING OF CASE  
MANAGEMENT CONFERENCE;  
[PROPOSED] ORDER**

Judge: Hon. Eumi K. Lee

Date: TBD  
Time: TBD  
Place: Courtroom 3

Pursuant to Local Rules 6-1(b), 6-2, and 7-12 of the Local Rules of the United States District Court for the Northern District of California, as well as this Court's Standing Order Section VI. Case Management Conferences, Plaintiff Kevin Smith ("Plaintiff") and Defendants InComm Financial Services, Inc. and Pathward, N.A. ("Defendants"), through their counsel, jointly stipulate as follows:

WHEREAS, on August 20, 2024, this case was reassigned from the Hon. Beth Labson Freeman to the Hon. Eumi K. Lee (Dkt. No. 62);

WHEREAS, on August 20, 2024, the Court vacated the previously-scheduled Initial Case Management Conference set for November 14, 2024, and ordered it would be reset by the Court as needed (Dkt. No. 62);

WHEREAS, on September 6, 2024, the Court reset the previously-scheduled hearing on Defendants' Motion to Dismiss the Amended Complaint for November 6, 2024 (Dkt. No. 66);

WHEREAS, the Court's Standing Order states in Section VI, Case Management Conferences, that the Court will consider setting an Initial Case Management Conference for 21 days after the hearing on a motion to dismiss if the motion is dispositive of the entire case;

WHEREAS, the Court is no longer scheduling further proceedings for November 27, 2024—which would be 21 days from the hearing—making December 4, 2024, the next available Wednesday;

WHEREAS, Defendants' pending Motion to Dismiss the Amended Complaint (Dkt. No. 47) would dispose of the entire case if granted;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND REQUESTED by and between the parties, through their respective attorneys of record, the Court set the Initial Case Management Conference for December 4, 2024, for the reasons set forth in the attached declaration.

1 DATED: September 16, 2024

/s/ Jane Metcalf

2 **PATTERSON BELKNAP WEBB & TYLER LLP**

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13 *Attorneys for Defendants*

14 DATED: September 16, 2024

/s/ John Blythin

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23 *Attorneys for Plaintiff*

24 **SIGNATURE ATTESTATION**

25 I hereby attest that I have obtained the concurrence of John D. Blythin, counsel for  
26 Plaintiff, for the filing of this Stipulated Request.

27 /s/ Jane Metcalf

28 Jane Metcalf

**[PROPOSED] ORDER**

PURSUANT TO STIPULATION, IT IS SO ORDERED

The Honorable Eumi K. Lee  
United States District Judge

DATED: